

~~FILED~~

DEC 20 1994

OFFICE OF THE CLERK

In The

Supreme Court of the United States

OCTOBER TERM, 1994

JOHN BRUCE HUBBARD,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

PAUL MORRIS*
LAW OFFICES OF
PAUL MORRIS, P.A.
Attorney for Petitioner
2600 Douglas Road
Penthouse II
Coral Gables, Florida 33134
(305) 446-2020

DREWS S. DAYS, III*
Solicitor General
Attorney for Respondent
Department of Justice
Washington, D.C. 20530
(202) 514-2217

* *Counsel of Record*

PETITION FOR CERTIORARI FILED JULY 27, 1994
CERTIORARI GRANTED OCTOBER 31, 1994

18 PP

TABLE OF CONTENTS

	<i>Page</i>
Relevant Docket Entries	1
First Amended Complaint of Trustee (Excerpt, ¶¶ 10-13), United States Bankruptcy Court, Eastern District of Michigan, Southern Division, Filed July 24, 1986	3
Trustee's Motion for Ex Parte Order Requiring Debtor to Surrender All Books, Documents, Records and Papers Relating to Property of the Estate and Order to Show Cause Why Debtor Should Not Be Held in Contempt of Court, United States Bankruptcy Court, Eastern District of Michigan, Southern Division, Filed July 24, 1986 ..	5
Answer [of Petitioner] to Trustee's Motion for Ex Parte Order Requiring Debtor to Surrender All Books, Documents, Records and Papers Relating to Property of the Estate and Order to Show Cause Why Debtor Should Not Be Held in Contempt of Court (Excerpt, ¶¶ 1-3), United States Bankruptcy Court, Eastern District of Michigan, Southern Division, Filed August 4, 1986	8
Debtor's [Petitioner's] Answer to Trustee's First Amended Complaint (Excerpt, ¶¶ 10, 13), United States Bankruptcy Court, Eastern District of Michigan, Southern Division, Filed August 11, 1986	11
Indictment, United States District Court, Eastern District of Michigan, Southern Division (Excerpt, Counts 5-7), Filed July 5, 1990	13

RELEVANT DOCKET ENTRIES

<u>Date</u>	<u>Description of Record</u>
6/24/86	First Amended Complaint (United States Bankruptcy Court, E.D. Mich)
6/24/86	Motion for Ex Parte Order Requiring Debtor to Surrender All Books, Documents, Records and Papers Relating to Property of the Estate and Order to Show Cause Why Debtor Should Not Be Held in Contempt of Court
8/4/86	Answer to Trustee's Motion for Ex-Parte Order Requiring Debtor to Surrender All Books, Documents, Records and Papers Relating to Property of the Estate and Order to Show Cause Why Debtor Should Not Be Held in Contempt of Court
8/11/86	Debtor's Answer to Trustee's First Amended Complaint
7/9/90	Indictment
1/10, 30, 31/91	Transcripts of Trial Proceedings
2/1, 4-7, 8, 10-12/91	Transcripts of Trial Proceedings
6/18/91	Transcript of Trial Proceedings

Relevant Docket Entries

6/20/91	Judgment of District Court
6/24/91	Notice of Appeal
2/15/94	Decision of the Sixth Circuit in United States v. Hubbard
2/28/94	Petition for Rehearing and Suggestion for Rehearing En Banc
3/30/94	Order Denying Rehearing

**FIRST AMENDED COMPLAINT OF TRUSTEE
(EXCERPT, ¶¶ 10-13), UNITED STATES BANKRUPTCY
COURT, EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION, FILED JULY 24, 1986**

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 85-03249-R
Chapter 7
Hon. Steven Rhodes

IN THE MATTER OF:

JOHN BRUCE HUBBARD, a/k/a BRUCE WELKER-
HUBBARD, a/k/a JOHN BRUCE WELKER-HUBBARD,

Debtor.

Case No. 85-1120-R

LAWRENCE R. VANTIL, and J.K. FELT,
Plaintiffs,

-vs-

JOHN BRUCE HUBBARD, a/k/a/ BRUCE WELKER-
HUBBARD and KATHLEEN HUBBARD,
Defendants.

Adversary No. 85-1341-R

ROBERT S. HERTZBERG, Trustee,

Plaintiff,

First Amended Complaint

-vs-

JOHN BRUCE HUBBARD, a/k/a BRUCE WELKER-HUBBARD, a/k/a JOHN BRUCE WELKER-HUBBARD, KATHLEEN HUBBARD, CHESTER KACZMAREK, MARY JANE HUBBARD, HUBBARD ASSOCIATES, JOHN LAUVE, and JOHNNY TRUPIANO,

Defendants.

FIRST AMENDED COMPLAINT

NOW COMES Robert S. Hertzberg, by and through his attorneys, Hertzberg & Golden, P.C. and for his First Amended Complaint, states unto this Honorable Court as follows:

* * *

10. Upon information and belief, the well-drilling machine was stored at property located at 900 Lakeshore, Grosse Pointe Shores, Michigan.

11. The Trustee has been unable to ascertain the present location of the well-drilling machine, however, said asset should be included within the Estate and turned over to the Trustee.

12. Upon information and belief, the Debtor possesses, uses and/or controls drill bits and drilling mechanisms, which items of property the Debtor has failed to report to the Trustee.

13. Upon information and belief, the drill bits and drilling mechanism were at one time being stored in a warehouse at a mushroom farm on Dequindre Road in Rochester, Michigan.

* * *

**TRUSTEE'S MOTION FOR EX PARTE ORDER
REQUIRING DEBTOR TO SURRENDER ALL BOOKS,
DOCUMENTS, RECORDS AND PAPERS RELATING TO
PROPERTY OF THE ESTATE AND ORDER TO SHOW
CAUSE WHY DEBTOR SHOULD NOT BE HELD IN
CONTEMPT OF COURT, UNITED STATES BANKRUPTCY
COURT, EASTERN DISTRICT OF MICHIGAN, SOUTHERN
DIVISION, FILED JULY 24, 1986**

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 85-03249-R

Chapter 7

Hon. Steven Rhodes

IN THE MATTER OF:

JOHN BRUCE HUBBARD, a/k/a BRUCE WELKER-HUBBARD, a/k/a JOHN BRUCE WEXLER-HUBBARD,

Debtor.

Case No. 85-1120-R

LAWRENCE R. VANTIL, and J.K. FELT,

Plaintiffs,

-vs-

JOHN BRUCE HUBBARD, a/k/a/ BRUCE WELKER-HUBBARD and KATHLEEN HUBBARD,

Defendants.

Trustee's Motion for Ex-Parte Order

Adversary No. 85-1341-R

ROBERT S. HERTZBERG, Trustee,

Plaintiff,

-VS-

JOHN BRUCE HUBBARD, a/k/a BRUCE WELKER-HUBBARD, a/k/a JOHN BRUCE WELKER-HUBBARD, KATHLEEN HUBBARD, CHESTER KACZMAREK, MARY JANE HUBBARD, HUBBARD ASSOCIATES, JOHN LAUVE, and JOHNNY TRUPIANO,

Defendants.

MOTION FOR EX-PARTE ORDER REQUIRING DEBTOR TO SURRENDER ALL BOOKS, DOCUMENTS, RECORDS AND PAPERS RELATING TO PROPERTY OF THE ESTATE AND ORDER TO SHOW CAUSE WHY DEBTOR SHOULD NOT BE HELD IN CONTEMPT OF COURT

NOW COMES the Trustee, Robert S. Hertzberg, by and through his attorneys, Hertzberg & Golden, P.C. and states unto this Honorable Court as follows:

1. That he is the duly appointed and serving Trustee pursuant to Order of this Court.
2. That the Debtor filed his petition for Bankruptcy on September 25, 1986.
3. That despite requests of the Trustee, the Debtor has

Trustee's Motion for Ex-Parte Order

refused to surrender all books, documents, records and papers relating to property of the Estate to the Trustee.

4. It is absolutely necessary that the Trustee be able to discover and review all of the books and records and other papers relating to the property of the Estate.

WHEREFORE, the Trustee requests this Honorable Court to grant an Ex-Parte Order requiring the Debtor to surrender all books, documents, records and papers relating to the property of the Estate of the Trustee. In addition, the Trustee prays that this Honorable Court enter an Order Compelling the Appearance of the Debtor, to show cause, if any there be, why the Debtor should not be held in contempt of Court for failure to surrender all the books, documents, records and papers relating to property of the Estate.

Respectfully Submitted,

HERTZBERG & GOLDEN, P.C.

By: s/ Steven T. Miller
Steven T. Miller (P36846)
344 N. Woodward Avenue
Second Floor
Birmingham, MI 48011
(313) 540-8282

Dated: July 24, 1986

**ANSWER [OF PETITIONER] TO TRUSTEE'S MOTION
FOR EX PARTE ORDER REQUIRING DEBTOR TO
SURRENDER ALL BOOKS, DOCUMENTS, RECORDS
AND PAPERS RELATING TO PROPERTY OF THE
ESTATE AND ORDER TO SHOW CAUSE WHY DEBTOR
SHOULD NOT BE HELD IN CONTEMPT OF COURT
(EXCERPT, ¶¶ 1-3), UNITED STATES BANKRUPTCY
COURT, EASTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION, FILED AUGUST 4, 1986**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
BANKRUPTCY COURT

Case No. 85-03249-R
Hon. Steven Rhodes
Chapter 7

IN RE:

JOHN BRUCE HUBBARD, a/k/a Bruce Welker-Hubbard, a/k/a
John Bruce Welker Hubbard,

Debtor.

Case No. 85-1120-R
Adversary Proceeding

LAWRENCE R. VANTIL and J. KAY Felt,

Plaintiffs,

v

JOHN BRUCE HUBBARD,

Defendant.

Answer to Motion

Case No. 85-1341-R
Adversary Proceeding

Robert S. Hertzberg, Trustee,

Plaintiff,

v

John Bruce Hubbard, a/k/a BRUCE WELKER-HUBBARD, a/ka
JOHN BRUCE WELKER-HUBBARD, KATHLEEN
HUBBARD, CHESTER KACZMAREK, MARY JANE
HUBBARD, HUBBARD ASSOCIATES, JOHN LAUVE, and
JOHNNY TRUPIANO,

Defendants.

**ANSWER TO TRUSTEE'S MOTION FOR EX-PARTE ORDER
REQUIRING DEBTOR TO SURRENDER ALL BOOKS, OF
THE ESTATE AND ORDER TO SHOW CAUSE WHY
DEBTOR SHOULD NOT BE HELD IN
CONTEMPT OF COURT**

NOW COMES the Debtor, John Bruce Hubbard, in the
above captioned action, by and through his attorneys, Gase,
Williams, Howell, and for his Answer to Trustee's Motion says as
follows:

1. That in Answer to the allegations contained in Paragraph
One of Trustee's Motion, Debtor neither admits nor denies that he
is duly appointed and serving. Debtor further states that Debtor,
on information and belief, believes that Robert S. Hertzberg is
serving as a successor trustee in this matter.

2. That in Answer to the allegations contained in Paragraph

Answer to Motion

Two of Trustee's Motion, Debtor denies same for the reason it is untrue. Debtor further states that Debtor filed a Petition for relief under Chapter 11 on September 25, 1985.

3. That in Answer to the allegations contained in Paragraph Three of Trustee's Motion, Debtor denies same for the reason it is untrue. Debtor further states that the original trustee requested records, books, and documents which were delivered to her place of business and from which she photocopied many documents and surrendered the balance of the documents to the Debtor. Debtor further states that at no time has the Trustee nor his agents contacted Debtor or Debtor's attorney and requested the materials alleged to herein.

* * *

**DEBTOR'S [PETITIONER'S] ANSWER TO TRUSTEE'S
FIRST AMENDED COMPLAINT (EXCERPT, ¶¶ 10, 13),
UNITED STATES BANKRUPTCY COURT, EASTERN
DISTRICT OF MICHIGAN, SOUTHERN DIVISION, FILED
AUGUST 11, 1986**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
BANKRUPTCY COURT

Case No. 85-03249-R
HON. STEVEN RHODES
Chapter 7

IN RE:

JOHN BRUCE HUBBARD, a/k/a BRUCE WELKER-
HUBBARD, a/k/a JOHN BRUCE WELKER HUBBARD,

Debtor.

Case No. 85-1120-R
Adversary Proceeding

LAWRENCE R. VANTIL and J. KAY Felt,
Plaintiffs,

v

JOHN BRUCE HUBBARD,
Defendant.

Case No. 85-1341-R
Adversary Proceeding

ROBERT S. HERTZBERG, Trustee,
Plaintiff,

Answer to Complaint

v

JOHN BRUCE HUBBARD, a/k/a BRUCE WELKER-HUBBARD, a/k/a JOHN BRUCE WELKER-HUBBARD, KATHLEEN HUBBARD, CHESTER KACZMAREK, MARY JANE HUBBARD, HUBBARD ASSOCIATES, JOHN LAUVE, and JOHNNY TRUPIANO,

Defendants.

DEBTOR'S ANSWER TO TRUSTEE'S FIRST AMENDED COMPLAINT

NOW COMES the Debtor, John Bruce Hubbard, in the above captioned action, by and through his attorneys, Gase, Williams & Howell, and for his Answer to Trustee's First Amended Complaint says as follows:

* * *

10. That in Answer to the allegations contained in Paragraph Ten of Trustee's First Amended Complaint Debtor denies same for the reason it is untrue.

* * *

13. That in Answer to the allegations contained in Paragraph Thirteen of Trustee's First Amended Complaint Debtor denies same for the reason it is untrue.

* * *

**INDICTMENT, UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF MICHIGAN, SOUTHERN
DIVISION (EXCERPT, COUNTS 5-7),
FILED JULY 5, 1990**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CRIMINAL NO. 89-80747

HON. GEORGE LA PLATA

VIO: 18 U.S.C. 152
18 U.S.C. 1001
18 U.S.C. 1341

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN BRUCE HUBBARD,

Defendant.

INDICTMENT

THE GRAND JURY CHARGES:

* * *

*Indictment***COUNT FIVE**

(18 U.S.C. §1001, 2(b) - CAUSING A FALSE AND FRAUDULENT STATEMENT IN A MATTER WITHIN A DEPARTMENT OF THE UNITED STATES)

That on or about August 4, 1986, in the Eastern District of Michigan, Southern Division, John Bruce Hubbard, defendant herein, in a matter within the jurisdiction of a department of the United States, to wit; the United States Bankruptcy Court for the Eastern District of Michigan, did knowingly and willfully cause a false and fraudulent statement of a material fact in his motion response entitled: "ANSWER TO TRUSTEE'S MOTION FOR EX-PARTE ORDER REQUIRING DEBTOR TO SURRENDER ALL BOOKS, DOCUMENTS, RECORDS AND PAPERS RELATING TO PROPERTY OF THE ESTATE AND ORDER TO SHOW CAUSE WHY DEBTOR SHOULD NOT BE HELD IN CONTEMPT OF COURT," filed in said department of the United States, with regards to United States Bankruptcy Case No. 85-03249-R, Adversary Proceeding Case No. 85-1341-R, Eastern District of Michigan. Said false and fraudulent statement consisted of the defendant's false pleading response to question number 3 of the Trustee's motion entitled: "MOTION FOR EX-PARTE ORDER REQUIRING DEBTOR TO SURRENDER ALL BOOKS, DOCUMENTS, RECORDS AND PAPERS RELATING TO PROPERTY OF THE ESTATE AND ORDER TO SHOW CAUSE WHY DEBTOR SHOULD NOT BE HELD IN CONTEMPT OF COURT," filed July 24, 1986, in said bankruptcy case, wherein the Trustee stated "That despite requests of the Trustee, the Debtor has refused to surrender all books, documents, records and papers relating to property of the Estate to the Trustee," and the defendant in his responsive pleading caused the following answer: "That in Answer to the allegations contained in Paragraph Three of Trustee's Motion, Debtor denies same for the reason it is untrue. Debtor further

Indictment

states that the original trustee requested records, books, and documents which were delivered to her place of business and from which she photocopied many documents and surrendered the balance of the documents to the Debtor. Debtor further states that at no time has the Trustee nor his agents contacted Debtor or Debtor's attorney and requested the materials alleged to herein." Said answer is false and fraudulent at least with regards to that portion of the answer stating that documents were delivered to the place of business of the original Trustee, she photocopied many and surrendered the balance to the debtor, all in violation of 18 U.S.C. Section 1001 and 18 U.S.C. Section 2(b).

COUNT SIX

(18 U.S.C. §1001, 2(b) - CAUSING A FALSE AND FRAUDULENT STATEMENT IN A MATTER WITHIN A DEPARTMENT OF THE UNITED STATES)

That on or about August 11, 1986, in the Eastern District of Michigan, Southern Division, JOHN BRUCE HUBBARD, defendant herein, in a matter within the jurisdiction of a department of the United States, to wit; the United States Bankruptcy Court for the Eastern District of Michigan, did knowingly and willfully cause a false and fraudulent statement of a material fact in his motion response entitled "DEBTOR'S ANSWER TO TRUSTEE'S FIRST AMENDED COMPLAINT," filed in said department of the United States with regards to United States Bankruptcy Case No. 85-03249-R, Adversary Proceeding Case No. 85-1341-R, Eastern District of Michigan, said false and fraudulent statement consisted of the defendant's false pleading response to question number 10 of the Trustee's pleading entitled "First Amended Complaint," filed July 24, 1986, in said bankruptcy case, wherein the Trustee stated "Upon information and belief, the well-drilling machine was stored at

Indictment

property located at 900 Lakeshore, Grosse Pointe Shores, Michigan," and the defendant in his responsive pleading caused the following false and fraudulent answer: "That in Answer to the allegations contained in Paragraph Ten of Trustee's First Amended Complaint Debtor denies same for the reason it is untrue," all in violation of 18 U.S.C. Section 1001 and 18 U.S.C. Section 2(b).

COUNT SEVEN

**(18 U.S.C. §1001, 2(b) - CAUSING A FALSE AND
FRAUDULENT STATEMENT IN A MATTER WITHIN A
DEPARTMENT OF THE UNITED STATES)**

That on or about August 11, 1986, in the Eastern District of Michigan, Southern Division, JOHN BRUCE HUBBARD, defendant herein, in a matter within the jurisdiction of a department of the United States, to wit; the United States Bankruptcy Court for the Eastern District of Michigan, did knowingly and willfully cause a false and fraudulent statement of a material fact in his motion response entitled "DEBTOR'S ANSWER TO TRUSTEE'S FIRST AMENDED COMPLAINT," filed in said department of the United States, with regards to United States Bankruptcy Case No. 85-03249-R, Adversary Proceeding Case No. 85-1341-R, Eastern District of Michigan. Said false and fraudulent statement consisted of the defendant's false pleading response to question number 13 of the Trustee's pleading entitled: "First Amended Complaint," filed July 24, 1986, in said bankruptcy case, wherein the Trustee stated "Upon information and belief, the drill bits and drilling mechanism were at one time being stored in a warehouse at a mushroom farm on Dequindre Road in Rochester, Michigan," and the defendant in his responsive pleading caused the following false and fraudulent answer: "That in Answer to the allegations contained in Paragraph Thirteen of Trustee's First Amended Complaint Debtor denies same for the reason it is untrue," all in violation of 18 U.S.C. Section 1001 and 18 U.S.C. Section 2(b).